

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SPECTRUM HEALTH, a Michigan
non-profit corporation,

Plaintiff,

Case No. 1:04-cv-508

v.

Hon. Wendell A. Miles

GOOD SAMARITAN ASSOCIATION, INC.,
MEDICAL BENEFITS ADMINISTRATORS OF
MD INC., JASON HARTZELL, and
AMY HARTZELL,

Defendants.

OPINION AND ORDER

This matter is presently before the court on Plaintiff's Motion for Attorney Fees Under FED. R. CIV. P. 54(d) (Dkt. # 19). Defendants Good Samaritan Association, Inc. ("Good Samaritan") and Medical Benefits Administrators of MD Inc. ("Medical Benefits") have objected to Plaintiff's motion (Dkt. # 23). For the reasons that follow, the Court will grant Plaintiff's motion and award an attorney fee of \$4,896.75.

Plaintiff filed its complaint in the Kent County District Court seeking payment for medical services rendered to the Hartzell Defendants. On August 4, 2004, Good Samaritan and Medical Benefits filed a notice of removal, and on August 20, 2004, a Motion for Judgment on the Administrative Record and to Dismiss. Plaintiff filed its Motion to Remand on August 26, 2004. On November 4, 2004, the Court granted Plaintiff's Motion to Remand for the reason that

there was not unanimity among the Defendants when the action was removed to federal court.¹

The Court awarded Plaintiff its costs and fees pursuant to 28 U.S.C. § 1447(c).

Plaintiff now seeks an attorney fee award of \$10,618.75. The statement attached to Plaintiff's brief in support of its motion shows 55.75 hours billed by three attorneys and one paralegal. The parties agree that the method of arriving at the amount of attorney fees that may be awarded begins by establishing the "lodestar," or multiplying the hours of compensable service by a reasonable hourly rate. Defendants do not object to the hourly rates charged by the Plaintiff's attorneys or paralegal. Defendants, however, contend that part of the 55.75 hours represents legal work on issues other than the motion for remand and should not be awarded. The Court agrees.

Section 1447(c) provides that "an order remanding the case may require payment of just costs and any actual expenses, including attorney fees, **incurred as a result of removal.**" 28 U.S.C. § 1447(c) (emphasis added). Under the plain language of the statute, the costs and fees that may be awarded are limited to those that would not have been incurred but for the removal. They do not include those fees and costs that arose during the period between removal and remand that were unrelated to the removal and remand. The Court has identified 24.25 hours, billed at \$4,896.75 by two attorneys and a paralegal, that are reasonably attributable to the issues presented by the removal and remand. (These charges are shown in the attachment to this opinion and order). The Court will award these charges. Other time billed related to Defendants' Motion for Judgment on the Administrative Record and to Dismiss, which remained pending when the

¹ Although Defendants Jason and Amy Hartzell had been served on July 12, 2004, they did not join in the removal.

Court entered its order remanding this case back to the state court. The Court will not award these charges unrelated to removal and remand.

Conclusion

For the foregoing reasons, the Court GRANTS Plaintiff's Motion for Attorney Fees Under FED. R. CIV. P. 54(d) (Dkt. # 19) to the extent that it awards Plaintiff attorney fees in the amount of \$4,896.75.

So ordered this 30th day of September, 2005.

/s/ Robert Holmes Bell
Robert Holmes Bell
Chief United States District Judge
for:
Wendell A. Miles
Senior United States District Judge

CHARGES RELATED TO REMOVAL AND REMAND

<u>DATE</u>	<u>TIME</u>	<u>CHARGE</u>	<u>SERVICE</u>
08/04/04	.75	135.00	Review removal pleadings; office conference with Stephen R. Ryan regarding same (REH)
08/04/04	.50	137.50	Review removal pleadings; office conference with Richard E. Hillary regarding propriety of removal and Motion for Remand (SRR)
08/05/04	.75	135.00	legal research regarding unanimity (REH)
08/06/04	.25	28.75	review proof of service on Hartzell Defendants (BJG)
08/13/04	2.00	360.00	legal research on unanimity and Motion to Remand (REH)
08/16/04	.25	68.75	office conference with Richard E. Hillary regarding Plan's responsive pleadings and Motion to Remand (SRR)
08/17/04	6.75	1,215.00	Draft Motion to Remand and brief in support; legal Research; letter to Defendants' counsel seeking concurrence (REH)
08/17/04	.25	68.75	Office conference regarding motion to remand (SRR)
08/18/04	.25	45.00	review/revise Motion to Remand; letter to Defendants' counsel (REH)
08/19/04	.25	45.00	Telephone conference with Defendants' attorney regarding Motion to Dismiss and Motion to Remand (REH)
08/23/04	.25	68.75	Office conference regarding Motion to Remand and Motion to Dismiss (REH)
08/26/04	1.25	225.00	Coordinate e-filing Motion to Remand and brief in Support; office conference regarding revisions (REH)
08/26/04	1.00	275.00	Review and revise Motion to Remand and brief in support; office conference with Richard E. Hillary regarding same; review and discuss Defendants' motion (SRR)
09/21/04	.50	137.50	Review Defendants' response to motion to remand; Conference with Richard E. Hillary regarding same (SRR)
11/08/04	.50	90.50	Review Order granting Motion to Remand; conference regarding same (REH)
11/09/04	.25	45.00	review court rule for deadline for filing petition for fees and costs (REH)
11/ 08/04	.50	137.50	review opinion and order; conference with Richard

11/11/04	.25	68.75	E. Hillary regarding same (SRR) Prepare correspondence to Pat Mansel regarding decision on remand (SRR)
11/16/04	6.25	1,312.50	Draft motion and brief in support for attorney fees; draft affidavit regarding same; correspondence to Defendants' attorney to obtain concurrence (REH)
11/17/04	.75	157.50	review and revise pleadings in support of motion for attorney fees (REH)
11/18/04	.50	137.50	review and revise pleadings in support of motion for attorney fees (SRR)
11/19/04	.25	2.50	coordinate filing of motion for attorney fees (REH)

SRR - Stephan R. Ryan
 REH - Richard E. Hillary, II
 BJG - Brenda J. Glass, paralegal